

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Letters Patent of:
Marchetto et al.

Patent No.: 7,539,756

Issued: May 26, 2009

For: METHOD AND SYSTEM OF DATA PACKET
TRANSMISSION TIMING FOR
CONTROLLING BANDWIDTH

APPLICATION FOR PATENT TERM ADJUSTMENT RECONSIDERATION
UNDER 37 C.F.R. § 1.705(B)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Madam:

Applicant requests reconsideration of the patent term adjustment indicated on the Issue Notification of May 6, 2009.

(1) Applicant is including the fee set forth in 37 C.F.R. § 1.18(e). Please charge any deficiencies or credit any overpayment to our Deposit Account No. 50-0665, under Order No. 320528005US from which the undersigned is authorized to draw.

(2) Statement of Facts

(i) Correct Patent Term Adjustment and Bases for Adjustment

The correct patent term adjustment is 697 days. The PTO's calculated patent term adjustment is 322 days. Applicant is entitled to an additional 375 days of patent term adjustment.

The PTO properly accounted for the delay under 35 U.S.C. § 154(b)(1)(A), referred to as the "A delay." The A delay is 812 days.

The PTO failed to properly account for the delay under 35 U.S.C. § 154(b)(1)(B), referred to as the "B delay." The B delay is 515 days.

The PTO failed to properly account for the overlap under 35 U.S.C. § 154(b)(2)(A) in the A delay and the B delay. The overlap is 140 days.

The PTO properly accounted for the reduction in patent term adjustment under 35 U.S.C. § 154(b)(2)(C). The reduction is 490 days.

The correct patent term adjustment is the sum of the A delay and the B delay minus the overlap and minus the reduction. Thus, the correct patent term adjustment is $812 + 515 - 140 - 490$, which is 697 days.

(ii) Relevant Dates

A Delay		
Filing Date + 14 months	1/31/2002	↓
First Office Action	4/5/2005	736
Issue Notification	5/26/2009	76
Total		812

B Delay		
Filing Date + 3 Years	1/31/2002	↓
Issue Date/1st RCE filed	6/30/2006	515
Total		515

Overlap	
Total	140

Reduction		
Non-Final Office Action	4/5/2005	↓
Reply	10/4/2005	91
Final Office Action	1/3/2006	↓
Reply	6/30/2006	88
Non-Final Office Action	9/22/2006	↓
Reply	8/1/2007	222
Final Office Action	10/26/2007	↓
Reply	4/24/2008	89
Total		490

(iii) Terminal Disclaimer

The patent is not subject to a terminal disclaimer.

(iv) Failure to Engage in Reasonable Efforts

Applicant is not contesting the reduction in patent term adjustment as accounted for by the PTO that are "deemed" to be a failure to engage in reasonable efforts under 37 C.F.R. § 1.704. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application under 37 C.F.R. § 1.704.

Dated: July 27, 2009

Respectfully submitted,

By 

Chun M. Ng

Registration No.: 36,878

PERKINS COIE LLP

P.O. Box 1247

Seattle, Washington 98111-1247

(206) 359-8000

(206) 359-9000 (Fax)

Attorney for Applicant